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# The Politics of Constitutional Reform: The New Power Structure and the Role of the Party

## Introduction

The central question facing Soviet constitutional reform is the future of the Communist Party of the Soviet Union. The process of reform has only begun to redefine the place of the Party within the Soviet government, and the final outcome is far from certain. Nevertheless, it is certain that the Party apparatus is an obstacle to the economic, social, and political transformation of the Soviet state and society.

When Mikhail S. Gorbachev came to power in 1985, he faced a difficult task. He inherited a decaying Stalinist totalitarian system in which security agencies were above the law, and economic bureaucracies were intertwined with corrupt Party officials. The Soviet Constitution was not a basic law that had a binding force on ministries, departments, or the Communist Party apparatus. The Party committees at the province (*obkom*), city (*gorkom*), and district (*raikom*) levels usurped the local political and administrative power of the soviets. Party committees controlled economic targets of production, ideology, and culture, and had power to appoint key personnel. The Constitution was no more than a declaration of principles and rights long since forgotten and never practiced. Constitutional guarantees of individual rights, such as freedom of speech and freedom of assembly, and of the right of the republics to secede from the Union, for example, were merely declarative adornments to the Soviet state, and were without legal force.

In early 1988, after consolidating his power in the Communist Party, Gorbachev began talking about a need to reform basic structures of government and to change the Soviet Constitution. His goal, even though he could not say it openly, was to make the Constitution a basic fundamental law binding on his own government and the Communist Party apparatus. Gorbachev announced his famous plan for a profound transformation of the entire Soviet political system at the 19th Party

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Conference in July 1988.<sup>1</sup> He anticipated that the constitutional reformation process would occur over several years. The plan consisted of three main stages: first, the reform of the central institutions of government; second, reform of local government; and third, the conclusion of a new Union treaty among the republics and the creation of a new constitution. According to this schedule, central government institutions were created in 1989. The second stage of the constitutional reform should be concluded in 1990 in the wake of elections to local soviets and republic legislatures. Reform of the Union structure and corresponding amendments to the Union Constitution are scheduled to follow.

Gorbachev's task is to free the government from the stifling grasp of the corrupt *nomenklatura*. Power must shift from the Communist Party bureaucracy to the newly created and popularly elected soviets in the central government, provinces, and republics. Reform, however, has encountered fierce resistance from the Party. While some stages of the constitutional reform have developed as planned, others have generated unforeseen and potentially disruptive complications which imperil the entire reform process.

## I. Reform of Central Government Institutions

### A. Constitutional Amendments

Before the 19th Party Conference in July 1988, conservative forces in the Communist Party of the Soviet Union (CPSU) made a feeble attempt to prevent Gorbachev from pushing through his political reform.<sup>2</sup> The conservative forces were worried about Gorbachev's clearly stated intent drastically to cut down the Party apparatus and eventually to undermine its monopoly on political power. Many vested interests within the Party and state bureaucracy were threatened.

The CPSU controlled the elections to the Party Conference. Consequently, Gorbachev barely had a majority of genuine supporters. Nevertheless, the conservative opposition did not challenge him openly, but hot debates were rumored to have taken place at the closed sessions of the Conference's committees. Gorbachev thus managed to persuade the Conference to accept his program of political reform very quickly and without genuine and open debate. On December 2, 1988, the Supreme Soviet adopted corresponding amendments to the Constitution.<sup>3</sup>

Two new institutions were to be established: the legislature and the Chairmanship. A new legislature, the Congress of People's Deputies (CPD), was elected in 1989 on the basis of the new electoral law and new

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1. *O nekotorykh neotlozhnykh merakh po prakticheskomu osushchestvleniiu reformy politicheskoi sistemy strany*, *Izvestiia*, July 2, 1988, at 1.

2. This attempt is usually associated with the Nina Andreeva article. Since then Andreeva has become an important leader of the conservative Communist opposition. See Andreeva, *For and Against*, *Moscow News*, Aug. 20-27, 1989, at 15.

3. *Ob izmeneniiakh i dopolneniiakh Konstitutsii (Osnovnogo Zakona) SSSR*, *Pravda*, Oct. 22, 1988, at 1.

norms of representation. The role of this supreme legislative institution was limited to electing the Supreme Soviet and to confirming or rejecting the Supreme Soviet's legislation. The Supreme Soviet, a smaller body, would actually engage in legislative activity three or four months a year. The CPD consisted of over 2,250 deputies. Seven hundred fifty seats were reserved for various political organizations, including 100 seats for the CPSU, 100 for the trade unions, 75 for Komsomol, and 75 for veterans.<sup>4</sup> Gorbachev wisely exempted the Politburo and the Central Committee, but not its individual members, from electoral threat. Many of these Party officials retained their seats through the 100 seats reserved for the CPSU. Many Party members resented that Gorbachev and the Politburo had exposed them to the risk of elections while they preserved for themselves 100 guaranteed seats on the legislature. The corporate representation provided the Party apparatus with additional, although limited, leverage over the composition of the legislature. Regardless of the outcome of elections in the territorial districts, several hundred delegates, hand-picked by the Party machine, would attain seats in the CPD.

Contested elections to the legislature were designed to make the Party compete for popular support. The cumbersome procedure of candidate nomination, selection, and confirmation as an officially registered candidate, however, made it possible for the local Party machine to control elections to a certain extent. The local Party managed to nominate single candidates without any competition in 384 electoral districts.<sup>5</sup> This generated a powerful protest movement in many cities under the slogan: "No to elections without choice." Despite the Party's advantages under the electoral law, the Party apparatchiks suffered a crushing defeat in the elections to the CPD. Thirty-eight *obkom* secretaries and dozens of other Party officials failed to be elected.<sup>6</sup>

When it assembled in June, 1989, the CPD reflected the composition of political forces of the time. The majority were Party officials, most of whom had run unopposed. A dynamic minority had won despite the obstacles put up by the Party machine.

By Western standards the CPD's proceedings looked more like a controlled political rally than a parliamentary debate. Sensational revelations and denunciations of privileges did not change the fact that on substantive matters the CPD had very little real power. Gorbachev tightly controlled the agenda and ran the Congress with an iron hand. Debates on key government appointments were rammed through in one

4. Article 18, Law on Elections of the People's Deputies, *O vyborakh narodnykh deputatov SSSR*, Pravda, Oct. 23, 1988, at 1, col. 4.

5. *V Tsentral'noi Izbiratel'noi Kommissii*, SOVETSKAIA ROSSIIA (Mar. 11, 1989).

6. The election results were published in these sources: *Vybor Naroda*, Pravda, Mar. 28, 1989, at 1; *Za perestroiku*, Pravda, Mar. 29, 1989, at 1; *Mandaty na vlast*, Pravda, Mar. 30, 1989, at 1; *Izvestiia*, Mar. 28, 1989, at 1; *Rabochaia podderzhka*, SOVETSKAIA ROSSIIA, Mar. 30, 1989; *Pobedy i porazheniia*, SOVETSKAIA ROSSIIA, Mar. 31, 1989; see also Mote, *Electing the USSR Congress of People's Deputies*, PROBS. COMMUNISM, Nov.-Dec., 1989, at 51-56.

day. He interrupted the delegates, deprived some of the floor, and argued with others. It was his parliament, not an independent legislature.

The Constitutional amendments of 1988<sup>7</sup> concentrated enormous power in the Presidium of the Supreme Soviet. The Presidium would control the Supreme Soviet, and, in theory, would be accountable to the legislative body.<sup>8</sup> The Presidium could declare a state of emergency in either parts of or the entire country.<sup>9</sup> It was to be in charge of virtually all state matters.<sup>10</sup>

In practical terms, the enormous power of the Presidium is in the hands of the Chairman of the Supreme Soviet (who is called the President in Western literature). His role was defined as follows: the Chairman is accountable to the CPD,<sup>11</sup> defines the foreign and domestic policy agenda for the CPD,<sup>12</sup> proposes the head of government (the Council of Ministers) to the Supreme Soviet,<sup>13</sup> heads the Defense Council,<sup>14</sup> and may issue ordinances [*rasporiazheniia*].<sup>15</sup> These ordinances are not defined. What would happen if the Supreme Soviet found these ordinances objectionable? Likewise, the Constitution did not address what would happen if the Supreme Soviet rejected the candidacy of the Prime Minister proposed by the President. The term of office for the Chairman was limited to no more than two five-year terms. It was not a coincidence that there was no provision as to whether the Supreme Soviet could nominate more than one candidate for election of the Chairman or whether candidates had to be Communist Party officials. The amendments left many questions unanswered.

It has been postulated that Gorbachev created a strong state apparatus as an alternative to the Party apparatus, which had been dragging its feet in the reform process.<sup>16</sup> With enormous power vested in him as the Chairman, Gorbachev has better protected himself against a replay of the situation which made it possible to overthrow Khrushchev: a mere vote in the Politburo and the Central Committee would not be enough to oust him. Whereas the Chairman of the Presidium of the Supreme Soviet was formerly a figurehead, Gorbachev wielded real power. He, however, sought more than additional protection of his power in restructuring the central bodies. Gorbachev's second goal was to delineate the spheres of authority between the Central Committee

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7. KONST. SSSR [CONSTITUTION OF THE USSR] 1988 Amendments, *reprinted & trans. in Note to the Translation of the Amendments of 1 December 1988 to the USSR Constitution in Force*, 15 REV. SOCIALIST L. 75 (1989).

8. *Id.* at art. 119 (*reprinted* at 97).

9. *Id.*

10. *Id.*

11. *Id.* art. 120 (*reprinted* at 99).

12. *Id.* art. 121 (*reprinted* at 99).

13. *Id.*

14. *Id.*

15. *Id.*

16. Hough, *The Politics of Successful Economic Reform*, SOV. ECON., Jan.-Mar., 1989, at 27.

and the Politburo on the one hand, and the Legislature and Council of Ministers on the other. The legislature was to develop laws according to his program, and the Council of Ministers' role in the government was to implement these laws and policies.

#### B. Effects of Central Reform: Analysis

Reform has not changed the Politburo's role as the Soviet Union's key policy making institution. Gorbachev's system of 1989 attempted to create a balance of power between the Politburo and the Central Committee he led on the one hand, and the Chairmanship and the Supreme Soviet Presidium he led on the other. It was a flexible system, which allowed Gorbachev to rely either on top Party institutions or top state institutions or on both, depending on the situation. The Politburo, under his command, collectively made policy decisions on all vital aspects of foreign and domestic policy, and the state structure, under his control, acted upon them. If the Politburo opposed his policy, Gorbachev could still introduce it through the legislature, thereby bypassing the Politburo. Under this system, the Politburo and the Central Committee still remained insulated from popular elections. Gorbachev did not diminish the power of the Politburo but redefined it in his favor. The system allowed him to make important decisions without being accountable to the electorate, yet also allowed him to call upon the electorate to protect him from the Politburo, should that body challenge him. Constitutions in the Soviet Union are seemingly written to serve rulers, not to constrain them.

##### 1. *The Guiding Role of the CPSU in Decline*

In the pre-Gorbachev Soviet constitutional system, resolutions of the Central Committee of the CPSU essentially determined the Supreme Soviet's legislation. In the summer of 1989, however, it became increasingly apparent that the Central Committee's resolutions were becoming unenforceable and increasingly ignored. For example, Baltic leaders refused to alter their legislative activity despite threats and reprimands issued in the Central Committee declarations of August 1989.<sup>17</sup>

In the summer of 1989, the Central Committee and Politburo members realized that the rise of the CPD threatened their power. Prime Minister and Politburo member Nikolay Pyzhkov warned, "Article 6 of the Constitution may be changed in such a way that the role of the Party will be reduced to nothing by the legislature."<sup>18</sup> He implied that the new structure shifted power to the legislature. Similarly, Politburo member Egor Ligachev made it clear that the newly created dual power structure was unacceptable.<sup>19</sup>

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17. The Central Committee declaration on the situation in the Baltics: *Zaiavlenie TsK KPSS o polozhenii v respublikakh Sovetskoi pribaltiki*, Pravda, Aug. 27, 1989, at 1.

18. Nikolai Ryzhkov's speech at the Central Committee Meeting, Pravda, July 21, 1989, at 3, col. 7.

19. Egor Ligachev's speech, *id.*

Party conservatives, however, were on shaky political ground. Their attempts to defend Central Committee prerogatives over the CPD generated widespread hostility. *Glasnost* conditions allowed the Soviet press to publish readers' opinions which previously would have led to imprisonment. For example, one worker wrote:

I believe that the Party, initially militant and democratic and a worker-peasant Party, has gradually swollen beyond all measure and has rotten through hopelessly, turning into a Party of rulers, a Party of administrative-command class. It has led us to our current, sorry present time, although it promised to lead us to a bright future.<sup>20</sup>

All public opinion polls of the fall of 1989 showed a dramatic decline in the authority of the CPSU and profound respect and support for the new legislature. At a Party school conference in Moscow last fall, a high-ranking Soviet official said, "A tendency is growing in public opinion towards a sharp decline in authority of the most important socio-political institutions in society: the KGB, procuracy, court, army, police, as well as Komsomol, trade unions and the Party."<sup>21</sup>

## 2. *Appraisal of Central Reforms*

Gorbachev emerged victorious in his first battle against the Party apparatus, stage one of his constitutional reform. The constitutional arrangement Gorbachev created in 1989 was a transitional structure from the unquestioned hegemony of the Politburo and the Central Committee to the Presidential system. The legislature is in place and is gaining authority; however, it is not yet a legislature in the Western sense. The government is still not accountable to it. The KGB, the Ministry of Defense and scores of industrial ministries still conduct their activity independent of CPD oversight.<sup>22</sup> Deputies complain that they cannot find out how much is spent on defense. The CPD commission on corruption likewise reported that the KGB and the Procurator's office has refused legislators access to documents even though, in theory, those agencies are accountable to the legislative body.<sup>23</sup> Proceedings of the Congress of People's Deputies captivate the attention of millions of TV viewers, but the deputies lack real rights and their status remains undefined.

While Gorbachev initially had to contend with only conservative Central Committee opposition, his task has become much more difficult

20. Letters from readers under the heading "The Party in Perestroika, Perestroika in the Party," *Sotsialisticheskaya Industriya*, Aug. 16, 1989, at 2. Reprinted in DAILY REP. SOV. UNION, Foreign Broadcasting Information Service, FBIS-Sov., Aug. 24, 1989, at 85.

21. Speech by N. M. Blinov, Moscow Higher Party School, reprinted in, *Partiia i perestroika Materialy diskussionnogo kluba Moskovskoi Vysshei Partiinoi shkoly*, POLITIKA, Moscow 1989, at 75.

22. Yu. N. Afanas'ev's speech at the Second Congress of People's Deputies, (Dec. 21), *Izvestiia*, Dec. 23, 1989, at 7.

23. *Gdlyan Commission Reports on Corruption*, DAILY REP. SOV. UNION FBIS-Sov., Dec. 28, 1989, at 38-45.

since the end of 1989 with the Second Congress of the CPD. A group of reformist deputies formed a faction (unheard of in Soviet politics since the 1920s) called the Interregional Group of Deputies.<sup>24</sup> Led by Yurii Afanas'ev, Andrei Sakharov (until his death) and Boris Yeltsin, the group quickly began to act as a progressive liberal opposition. The Interregional Group attempted, without success, to raise the question of the legitimacy of Article 6 of the Constitution. Article 6 guarantees the leading role in society to the CPSU. The group claimed that no Party or political organization should have a guaranteed leading role, and that the next stage in the constitutional reform must be a multi-party system. In a sensational speech, Yurii Afanas'ev said:

We are against a decreed leading role of the CPSU, that is we are against a monopoly on power for the CPSU which has led the country to unheard of calamities. We are against direct interference of the party apparatus, Politburo and the Central Committee into state, economic and other spheres of society's life. These should lie exclusively within the competence of the soviets on the basis of law.<sup>25</sup>

In December 1989, the Second Congress of People's Deputies launched a strong movement against special election privileges for the Communist Party. The CPD abolished both district selection meetings, which made manipulations of elections possible, and corporate representation. It also made appropriate changes in the electoral law.<sup>26</sup> Gorbachev found himself trying to appease both the conservatives and the reformers, and increasingly losing the support of both.

Currently, constitutional reform has reached a precarious stalemate. On the one hand, the legislature is in place and eventually is likely to assert its independent and superior position over the CPSU, the Central Committee, and even the Politburo. On the other hand, the Politburo still holds the *de facto* reigns of power, and a collision between the two may precipitate a serious constitutional crisis.

## II. Reform of Local Government

The crucial problem in the second stage of constitutional reform is the relationship between the city and province level Party committees and the city and province soviets. It is difficult to reconcile the CPSU's guaranteed role with the people's sovereignty in local government elections.

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24. Concerning the formation of the Interregional Group, see a special issue of the Interregional Group's program: *Narodnyi Deputat*, SOVETSKII FIZIK No. 34, July 28, 1989, Moscow.

25. Yu. N. Afanas'ev's speech at the Second Congress of People's Deputies, (session of December 21), *Izvestiia*, Dec. 23, 1989, at 7, col. 7.

26. *Supreme Soviet Votes on Draft Election Law*, Report on the USSR (A weekly publication of RFE/RL) Vol. 1 No. 44, Nov. 3, 1989, at 34-35; *Electoral System Amendments Law Adopted*, *Izvestiia*, Dec. 23, 1989, DAILY REP. SOV. UNION FBIS-Sov., Dec. 28, 1989, at 50. For a summary of the major electoral system changes in the Constitution, see A. I. Luk'ianov's speech at the Congress of People's Deputies, *Izvestiia*, Dec. 17, 1989, at 2.



A look back at the two years of Gorbachev's reform efforts in this area reveals that as with reform of the central institutions, he embarked upon reform of local government with great caution. He wanted to avoid provoking the local Party, and preferred instead to give the Party time to adjust to the reform process.

In speeches, Gorbachev persistently has reiterated that his goals include involvement of the people [*narod*] in the country's affairs. He hoped to unleash the people's creative energy and to remove the Party's bureaucratic tutelage. Most of Gorbachev's articles and speeches stress that power must be returned to the people's elected representatives.

The next stage [of reform] will help us to complete the task of handing over power to the Soviets. What I mean is the stage involving the formation of republican bodies of power and local soviets. This will perhaps be the most important event since the October revolution . . .<sup>27</sup>

Although he emphasized that the people must be the true masters in the districts, cities, and provinces, he initially avoided the issue of what the *obkom* secretary's authority and role would be if and when real authority is transferred to the soviets. He did not say whether the Party committee chairman would become the soviet chairman, like the General Secretary becomes the Supreme Soviet chairman. In his speech at the 19th Party Conference in July, 1988, Gorbachev did not explain what would happen if a city Party boss ran and lost in an election to the local soviet chairman. He only remarked that a Party leader would have to draw his own conclusions. Gorbachev deliberately left this issue unresolved. Did he mean that the Party leader must resign?

#### A. Power of *Obkom* Secretary and the Role of the Party

Throughout 1988 and 1989, *obkom* secretaries remained in complete control of the economic life in their provinces. They continued to receive targets for grain and industrial production, and deliberately set low targets to make sure that they were fulfilled. Indeed, there has been little evidence of restructuring of Party self-perception, authority, or function on the local level.

For example, *Pravda* reported that an *obkom* secretary was concerned about conditions in his Kursk province. Roads were in terrible shape, he described, and eighty percent of collective farms in his Kursk were "weak."<sup>28</sup> To solve these problems, he praised the contract brigades approach and the practice of renting land to farmers. These proposals, which projected a *perestroika*-type image, overshadow the fact that issues such as roads and collective farms should be the responsibility of the soviets, not Party officials. Thus, the *obkom* secretary appeared to define

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27. Gorbachev on Electoral Changes, Moscow Television Service in Russian, October 23, 1989: DAILY REP. SOV. UNION FBIS-Sov., Oct. 24, 1989, at 40.

28. *Ogromnaia sila - opyt*, Pravda, Nov. 18, 1988, at 1.

his function and role in the old way.<sup>29</sup>

The literature for Party members tries to define exactly what would remain in the Party's sphere of authority after local government reform. The journal *Party Life* contradicted Gorbachev's statements that the soviets would be in charge, stating that overall Party supervision of the economy remained in force. The journal stated that only methods would change. The slogan of the day was changed from a command-administrative system to political leadership. The Party was to retain control in the areas of development of economic policy, supervision of the cadres, control of economic agencies, and supervision of democracy in the work-place. The overall task of the Party was defined as follows: "The Party sees the main meaning of restructuring of the Party organizations in that they occupy themselves with truly Party work, i.e., political, organizational, and ideological work."

*Party Life* directed local organizations to avoid the extremes of either abandoning the leadership roles, thereby engaging in purely propagandistic work on the one hand, or lapsing into a command tone on the other.<sup>30</sup> The journal warned Party leaders that control over the cadres was a powerful weapon. *Party Life* urged the move to a new approach away from the old system of *nomenklatura* appointments. Party leaders would recommend, not appoint, comrades for promotion. They should persuade others rather than issue orders.<sup>31</sup> Communists, however, were urged to perceive themselves as a special, chosen people, above others. They were to remain leaders of the society.

As its literature demonstrates, the Party interpreted Gorbachev's call to reform local government as merely a stylistic rather than substantive change in CPSU operations. The Party was to remain a privileged, unelected, and self-perpetuating elite.

## B. Appraisal of Local Reform

The mixed signals from Moscow were partly responsible for the local Party's wait-and-see attitude. Both *Kommunist* and *Party Life* asserted that the Party was in control and needed only to change its method of leadership. Gorbachev confused local Party leaders by calling for them to fulfill economic targets while also requesting that they stop issuing commands. They felt compelled to deliver, but their power to enforce targets was being undermined by Gorbachev's speeches.

The attempt to reform the Party in 1988 and 1989 must have been frustrating for Gorbachev. Local Party secretaries have persistently resisted constitutional reform since the adoption of the first constitutional amendments in 1988. For example, in the spring of 1989, they

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29. For a detailed discussion of the Regional Party Secretaries' opposition to reform, see Brovkin, *First Party Secretaries: An Endangered Political Species?*, PROBS. COMMUNISM (Jan.-Feb. 1990).

30. *Partiinoe rukovodstvo ekonomikoi*, 21 PARTIINAIA ZHIZN' 5-7 (1988).

31. *Peredovaia. Demokratizatsiia rukovodiashei deiatel'nosti i vnutrennei zhizni partii*, 22 PARTIINAIA ZHIZN' 4-10 (1988).

almost universally orchestrated CPD elections without choice by nominating themselves without alternative candidates. They disenfranchised many voters, banned meetings of informal organizations, and relied on old methods of administrative control. Constitutionally, all power belonged to the soviets; in reality, however, the local Party secretaries held a striking amount of power.

Despite the Party control and efforts to assure retention of office, the local Party had not been able to respond to new demands and, despite all these efforts, the election returns showed a catastrophic defeat of Party secretaries. The returns created panic within Party organizations. The local Russian elections, originally scheduled for November, 1989, were postponed until spring of 1990. Apparently in response to the poor performance of secretaries in the CPD elections, Gorbachev's Party Secretariat purged those defeated from positions of authority. This purge continued unabated throughout 1989. Over the last months of 1989 and first weeks of 1990, not fewer than a dozen *obkom* secretaries were replaced.<sup>32</sup> The message to the Party seems to have been thus: either improve the local economy and win popular support, or face replacement either from above or through elections from below.

The purge did not produce the desired results. The new officials had the same frame of mind as the old ones. Boris Gidasov in Leningrad replaced Yurii Solov'ev as the first *obkom* secretary and was just as conservative as his predecessor, but even more aggressive and resolute in his opposition to Gorbachev. The postponement of local elections was a concession to the conservative Party establishment. The conservatives hoped that more time would translate into a superior and more organized campaign.

In November, 1989, local Party leaders launched an aggressive political campaign following the initiative of the Leningrad Obkom. It was couched in populist denunciations of the center and blamed the ministries and the liberal reformers for *perestroika*'s failures.<sup>33</sup> Party conservatives tried to capture popular support by blaming Gorbachev and *perestroika* for the current difficulties. The Supreme Soviet of the Russian Federation passed a very conservative electoral law for local elections. It retained district section meetings, which were widely perceived as Party instruments for striking undesirable candidates off the ballot. Moreover, it preserved corporate representation for the Communist Party and other organizations. Conservatives pushed a local election law through the Russian Republic Supreme Soviet, which allowed formation of production constituencies based at enterprises. Thus, Party secretar-

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32. For a discussion of the Communist Party personnel changes, see Hough, *The Politics of Successful Economic Reform*, 5 Sov. ECON. 3-47 (1989); for the most recent dismissals of party officials, see *Plenum Magadanskogo obkoma KPSS*, *Izvestiia*, Dec. 23, 1989, at 4; *Sostoialis' plenumy*, *Pravda*, Jan. 6, 1990, at 2.

33. See Sidorov, *Tret'ia volna*, 48 ARGUMENTY I FAKTY 4.

ies could rely on loyal worker collectives to secure electoral support.<sup>34</sup>

Public opinion in the Soviet Union today clearly supports the institutionalization of a multi-party system. In light of the recently announced Party platform that renounces the Communist Party's monopoly, the multi-party system may become a reality.<sup>35</sup> Interregional opposition and the Popular Fronts in Leningrad, Moscow, and other cities, for example, are demanding a constitutional right for anyone to run in elections against the Communist Party's candidate. It is likely that CPSU leaders will continue to suffer substantial losses in local elections. Liberal Popular Fronts in Russian cities are a powerful political force. In some cities an *ad hoc* group of deputies to an important city soviet could constitute a majority against the Communists. Serious conflict and even street violence may occur if the new soviet refuses to abide by the instructions of the CPSU province committee. The CPSU's leading role tenuously guaranteed by the Constitution conflicts with the principle of popularly elected soviets, and now, even the Party line. In such a situation, the inconclusiveness of the local government reform is apparent and may lead to a constitutional crisis. There is a legislative vacuum: political development has outpaced constitutional reform.

### III. Constitutional Reform of the Union Structure

The contradiction between the provisions in the Constitution and reality is even more glaring in this aspect of constitutional reform. The Constitution grants Soviet republics the right to secede from the Soviet Union.<sup>36</sup> This article has existed since Stalin's time, but even then everyone understood that the rights and guarantees in the Constitution did not reflect the reality of the Soviet system. In reality, crude force and incorporation of independent states were behind the facade of a union of sovereign republics. The cornerstone of Communist control over the republics was Lenin's principle that the republics would have (at least on paper) sovereign rights, but that one united Communist Party would serve all republics. This ingenious system preserved the attributes of "sovereign" republics, but ensured tight control of the republics by the Russian Communists through the Party.

In 1988, in addition to the other reforms he proposed, Gorbachev asserted that reform of the Union structure was needed. Since this was a very sensitive and explosive issue, constitutional reform of the Union structure was postponed until after the creation of central institutions and local government elections. On the eve of the 19th Party Conference in 1988, no one expected that the status of Union Republics would be the number one issue on the national agenda. No one expected that

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34. *Rossia. Diskussia v Parlamente*, Pravda, Oct. 27, 1989, at 3.

35. Lithuania and Estonia dropped the Communist Party leading role clause from their Constitutions. See *Lithuanian 7 December Supreme Soviet Session and More on End of Lithuanian Party Monopoly*, DAILY REP. SOV. UNION FBIS-Sov., Dec. 8, 1989, at 48-51.

36. KONST. SSSR, *supra* note 7, art. 72.

within a year and a half powerful political parties would rise in the republics and that they would be stronger and more popular than the Communist Party itself, or that Lithuania would declare its independence.

#### A. Popular Fronts and Reform of the Republic-Union Relationship

In the fall of 1988, Popular Fronts emerged as political organizations in the Baltic republics.<sup>37</sup> Wisely, Gorbachev welcomed their appearance, viewing them as instruments of support against the entrenched resistance of the CPSU bureaucracy. Popular Fronts were Gorbachev's supporters for democratization, and economic and legal reform. They were liberals who shared the same goal of creating a state based on the rule of law. In the spring of 1989, similar Popular Fronts appeared in Leningrad, Moscow, Yaroslavl', and Novosibirsk, and in many other Russian and Ukrainian cities. Liberal *intelligentsia* entered the political arena on the side of reform and Gorbachev.

In the Union republics, however, economic reform and democratization immediately brought Popular Fronts into conflict with Moscow's political and economic bureaucracy (the Central Committee and the ministries). The reform process acquired overtones of national liberation. Popular Fronts in the Baltics and other republics began to act as if the words "union of republics" were not a facade, but a constitutional reality. Under the influence of Popular Fronts, local Communists began to act in harmony with them. Their legislatures passed a number of laws on citizenship, language, elections, and property rights that challenged the dictatorship of the Ministries and Central Committee. Several times during 1989 Gorbachev declared legislation in the Baltics unconstitutional and illegal.<sup>38</sup> In its August 1989 declaration, the Central Committee warned the Baltics that the course of separatism was fraught with bloodshed and tragedy.

There was nothing unconstitutional in the Baltic legislature's action. The Central Committee acted as if the constitutional guarantee of the right to secede did not exist. In fact, at that stage, there was no movement for outright secession. The Communist Party in these republics and the Popular Fronts still talked in terms of equal rights for sovereign Soviet republics. Threats from the Central Committee and local elections in the Baltics in 1990, however, profoundly changed the situation.

Facing local elections and the prospect of heavy losses, the Lithuanian Communist Party decided to break away from the Moscow Commu-

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37. For a discussion of the development of Popular Fronts in the Baltic republics, see Dreifelds, *Latvian National Rebirth*, PROBS. COMMUNISM (July-Aug. 1989), at 77-94; Taagepera, *Estonia's Road to Independence*, PROBS. COMMUNISM (Nov.-Dec. 1989) at 11-26.

38. See, e.g., *Ukaz Prezidiuma Verkhovnogo Soveta SSSR*, Pravda, Aug. 17, 1989, at 2 (USSR Supreme Soviet Presidium Decree on elections to local soviets . . . in Estonian SSR).

nists in December 1989.<sup>39</sup> It was an unprecedented step which amounted to a profound constitutional crisis. The Lithuanian Communists' message to Moscow was clear: to compete with the Lithuanian Popular Front (Sajudis) in elections for popular support, the Lithuanian Communists could not be seen merely as subordinates of the Soviet Central Committee. Moscow clearly would benefit from continued dealings with Lithuanian Communists rather than with the Sajudis, yet Moscow could not use force without harming relations with the West.

In December, 1989, the All-Union Central Committee plenum debated the separation of the Lithuanian Communist Party. Ignoring the constitutional right of secession, Gorbachev said:

The separatists are pushing the people into a historical dead-end. I do not cease repeating it, because I am deeply convinced of it.

...

The current Party and state leadership will not permit the dissolution of the Union State. I would like to say this at the Central Committee plenum openly and straightforwardly.<sup>40</sup>

At this stage Gorbachev took a hard line toward his Lithuanian comrades. He portrayed decisions of the Lithuanian Party Congress as capitulations to bourgeois nationalists and separatists, and condemned their choice:

The decisions of the 20th Congress of the Lithuanian Communist Party seen from an organizational and statutory angle, are unlawful [*nepravomochny*]. The delegates to this Congress were elected in accordance with the statutes of the CPSU, on the platform of the CPSU, in accord with the norms of Party life in the CPSU. They had received a mandate for restructuring and not for splitting the Party.<sup>41</sup>

Clearly motivated by dramatic and unexpected events in the Baltic republics, Gorbachev sided with those who strove to establish a legal mechanism that would make it difficult, if not impossible, for these republics to secede from the Soviet Union.

## B. Constitutional Oversight Committee and Federative Relations

Debates at the Second Congress of People's Deputies in December, 1989, demonstrated that the role of Union straightjacket was assigned to the Constitutional Oversight Committee. The deputies were convinced of the need for an institution that would verify the constitutionality of hundreds of instructions and circulars issued by ministries and local bodies. Liberal critics pointed out that the bill did not encompass oversight of the activities of Politburo members. Deputy T. E. Abuladze (a well-known Georgian film producer) asked:

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39. *Otkrytsia S'ezd Kompartii Litvy*, Pravda, Dec. 20, 1989, at 3.

40. M. S. Gorbachev's speech at the C. C. Plenum, *V edinstve partii—sud'ba perestroiki*, Izvestiia, Dec. 26, 1989, at 2, col. 2, 6.

41. *Id.*

Is the future Constitutional Oversight Committee going to guard us from the arbitrary decisions of political institutions, such as, for example, possible directives in the future of the Central Committee Secretary on agriculture, on deployment of the army for punitive operations against its own people?<sup>42</sup>

Abuladze was referring to Ligachev's involvement in dispatching troops to Tbilisi in the spring of 1989, which ended in a massacre of demonstrators. Other liberal and Baltic deputies argued that the Constitutional Oversight Committee would curtail laws passed in the republics rather than the powers of the Politburo, Ministry of Defense and the KGB. Baltic laws on language, residence requirements, elections, military personnel rights as well as other laws and ordinances were now constitutionally vulnerable. People's Deputy V. Ya. Skudra, the Latvian Minister of Justice, said:

Today as never before, it is necessary to take into account the simple truth that federative relations in our society must be based not on methods of administrative fiat, not on permissions and prohibitions, but exclusively on the willingness of the republics to maintain the Union.<sup>43</sup>

The group of Baltic deputies sharply criticized the projected amendment.<sup>44</sup> Other liberal delegates insisted that all disputes between republics should be resolved on the basis of the new Union treaty, which would define the prerogatives of the Union and the republics. In a powerful speech on behalf of the Interregional Group, Yurii Afanasiev said, "We are against subordination of the national republics to the strong center, that is we are against a unitary imperial state, which had been created by Stalin and is being preserved to this very day."<sup>45</sup> In other words, there should be no Central Oversight Committee prior to a treaty which would protect republican autonomy. Until such a treaty was concluded, no Oversight Committee should be created. Deputy T. E. Abuladze put it this way: "I will vote against adoption of the law, the purpose of which is to guard Stalinist-Brezhnevist principles of false freedom and fictitious equal rights."<sup>46</sup>

The leader of the Interregional Group and a member of the Constitutional Revisions Committee, Andrei Sakharov, had been working on the new Constitution until his sudden death. He envisioned the creation

42. T. E. Abuladze's speech at the Second Congress of People's Deputies (Dec. 22 session). *Vtoroi S'ezd Narodnykh Deputatov, Stenograficheskii otchet*, Izvestiia, Dec. 23, 1989, at 10, col. 7.

43. V. Ya. Skudra's speech at the Second Congress of People's Deputies (Dec. 22 session). *Id.*, col. 3-4.

44. For a summary of the Baltic Parliamentary Group declaration, see *Pravovye garantii perestroiki*, Izvestiia, Dec. 23, 1989, at 4.

45. Yu. N. Afanas'ev's speech at the Second Congress of People's Deputies (Dec. 21 session). *Id.* at 7.

46. T. E. Abuladze's speech. *Id.* at 10. For a detailed discussion of the development of the Central Oversight Committee (or Committee of Constitutional Supervision), see Hausmaninger, *The Committee of Constitutional Supervision of the USSR*, 23 Cornell Int'l L.J. 287, 289-99 (1990).

of a voluntary union of republics based on such a treaty.<sup>47</sup> The conservative majority in the CPD, however, prevailed and the Constitutional Oversight Committee was created.<sup>48</sup> It is likely that the Baltic legislatures will ignore its rulings and precipitate a series of new constitutional crises.

### C. Appraisal

The constitutional reform of the Union structures has so far been nothing more than an attempt to negate and whitewash the theoretical right of the Union republics to secede. The constitutional amendments of December, 1989, the Party declaration of August, 1989, and the creation of the Constitutional Oversight Committee should be seen as the Party leadership's attempts to adjust to the quickly changing political reality. Throughout this period, Moscow reacted with astonishment and reprisal, followed by grudging acceptance of de facto changes.

Neither side is satisfied with the Constitution as it stands. The republics want to preserve the secession clause and instill some concrete meaning into it. The CPSU leadership ignores the clause and issues warnings and threats. Gorbachev has done nothing but maneuver and compromise. He responds to initiatives instead of taking them. He tried to please the conservative Central Committee by warning and threatening the Lithuanians, but in the end, he acquiesced to the ever increasing demands of the Baltic republics. In early January, 1990, he even suggested that a law should be drafted that would provide a procedure for a union republic to secede.

The prospect of a constitutional order based on a treaty of equal republics still exists. If Gorbachev is to attain his goal of creating a constitutional regime based on a rule of law, he must live up to the promise he made to the United Nations to respect sovereignty and free choice. It is likely that by the time a new treaty is drafted some other Soviet republics in addition to Lithuania will declare independence, with or without constitutional reform.

### Conclusion

The constitutional reform process in the Soviet Union has reached a dangerous point. Political development far outstrips constitutional reform. Central institutions of state power are in disarray. The prestige and authority of the Politburo, Central Committee, KGB, and the Party as a whole, are in precipitous decline. The relations and rules of the Politburo and legislature are not defined. A de facto dual power system

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47. For a discussion of Sakharov's constitution draft, see Remnick, *Soviet Rights Champion Left Model Constitution*, Wash. Post, Dec. 18, 1989, at A27.

48. For the text of the law amending the constitution and creating the Constitutional Oversight Committee, see *Zakon SSSR o Konstitutsionnom nadzore v SSSR* and *Zakon SSSR ob izmeneniiakh i dopolneniiakh stat'i 125 Konstitutsii SSSR*, *Izvestiia*, Dec. 26, 1989, at 1, 3. See also Hausmaninger, *The Committee of Constitutional Supervision of the USSR*, 23 CORNELL INT'L L.J. 287 (1990).



exists between the Central Committee and Politburo on the one hand, and the Congress of People's Deputies on the other. In local government, a revolutionary upheaval is unfolding which has already begun to sweep away the Party's constitutionally guaranteed monopoly on power.

Reform of the Union structure has been disruptive and explosive. In the republics, a bitter and escalating struggle over old grievances, territorial rivalries, language use priority, water, resources, and political rights is likely to transform the Soviet Union beyond recognition.

Constitutions are created to establish basic laws for a country that already exists. The Soviet Union apparently contains many people who do not want to be part of it. What started as constitutional reform directed at peaceful transformation from a dictatorial bureaucratic empire into a constitutional democracy has turned into a revolutionary upheaval. Reform of the basic political structures has turned some reformers into revolutionaries. The Interregional Group is no longer satisfied with a reformed constitution. It wants a new democratic constitution. Baltics, Transcaucasians, Moldavians, and Ukrainians all want to redefine their place in the Soviet Union or secede. They reject the current constitution as outdated. Yet, constitutional reform has triggered fierce opposition from the Communist Party to all three areas of reform discussed above.

A situation is developing in which no one is satisfied with the emerging constitutional reform. The Party wants its dominant position restored. The awakened society in Russia and the national movements in the republics want to move on. As initiator of the constitutional reform, Gorbachev is increasingly running the risk of not being able to satisfy either the Party or the reformers. The current Soviet Constitution is like a building under repair. Some parts have been disassembled, but new parts have not yet been put into place. In this case, the entire building may collapse.

Legislative power must shift to the CPD, and executive power must shift to the Council of Ministers, which is accountable to the legislature. The army and the KGB must cease to be instruments of the Party and become state institutions outside Party control. This amounts to separating the Communist Party from the state, and making it equal to other political parties. To make this constitutional reform logical, the Soviet Union must remove Article 6 from the Constitution, thus making the Politburo of the CPSU a Party body rather than a state governing body.

All of this implies that for the first time since the Bolshevik Revolution, some party other than the Communist Party may form local and even central governments. Such changes in law would be a radical departure from all post-Lenin Soviet Constitutions and may serve as the cornerstone to a new democratic constitution.

Constitutional reform requires respect for the right of every republic to secede, and to work out a new Union treaty for those who prefer to stay. If Gorbachev survives the attack of the Party bureaucracy, he might lead the country to real constitutional reform. It is also possible, how-

ever, that the forces he has unleashed will spin out of control and turn constitutional reform into a revolution, and possibly a civil war.<sup>49</sup>

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49. This Article was submitted for publication on February 16, 1990. During March and April of 1990, the process of constitutional reform in the Soviet Union entered a new stage. Gorbachev abandoned the post of Chairman of the Supreme Soviet and accepted the newly-created post of President. The Central Committee plenum recommended that Article 6 of the Constitution be scrapped, which opens the way for the emergence of a multi-party system. Local elections in March of 1990 have demonstrated that the Popular Fronts, as expected, have scored major victories over Communist candidates in a number of large cities. Finally, the constitutional crisis over Lithuania's declaration of independence entered an explosive and dangerous stage.

These revolutionary developments demonstrate that in the three areas of constitutional reform considered in this Article (reform of central government, reform of local government, and reform of the union structure), the Communist Party, as a pivotal institution of the Soviet political system, is in the process of disintegration. The year 1990 may well mark a new stage in the transition to a dramatically different political system based on executive presidency in the central government, a multi-party system in local government, and secessionist struggle of some republics in the Union structure.

